



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/167338

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 17, 2015, under Wis. Admin. Code, §HA 3.03, to review a decision by the Milwaukee Early Care Administration to recover child care assistance, a hearing was held on September 15, 2015, by telephone. A hearing set for August 18, 2015 was rescheduled at the petitioner's request.

The issue for determination is whether the agency budgeted income correctly when determining a possible overpayment due to failure to report increased income.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]  
Milwaukee Early Care Administration  
1220 W. Vliet St., 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. In 2014 and 2015 petitioner received child care assistance for her two children. She has four people in her household.
3. In May, 2014, petitioner reported a new job at [REDACTED], and she provided an employer verification form showing her income. Agency exhibit page 35. The verification statement

showed that petitioner worked 40 hours per week at \$16.74 per hour. It also mentioned \$650 per month in bonuses. In determining eligibility the agency budgeted only the hourly wage for a monthly amount of \$2,879.

4. After a review, the agency sent petitioner a notice dated November 17, 2014 continuing her child care eligibility. The notice showed that the agency was budgeting \$2,738.91 as monthly income based upon two pay stubs provided by petitioner. At the review petitioner provided two pay stubs dated October 10 and October 24, 2014, but she failed to provide a third pay stub, also dated October 10, 2014, that was a separate check for her bonus. See Agency Exhibit pp. 63, 64, and 128.
5. Because of bonuses and other pay incentives petitioner's monthly income actually was higher than the amount budgeted. An agency worker noted the incentives in a review in May, 2015 and the agency requested income information from [REDACTED] dating back to petitioner's hire.
6. Petitioner's income fluctuated monthly due to the various pay incentives. The high earnings month was January, 2015 with \$5,722.93; the low month was November, 2014 with \$3,336.48. For the period July 1, 2014 through May 31, 2015, the average monthly income was \$4,105.58. See Employer Verification of Earnings, agency exhibit page 137 for actual monthly income figures. The figure for May, 2015 on that page was for only one pay date; the full month's May income was \$3,707.80 as seen in the three pay stubs from that month. Agency exhibit pages 133-135.
7. By a notice dated June 17, 2015, the agency informed petitioner that she was overpaid \$3,710.91 in child care during the period July, 2014 through May, 2015, claim no. [REDACTED]. The worker reached that figure by comparing each month's gross income against the child care monthly income limit. In individual months in which the income was over the limit, the worker counted all child care assistance paid that month as an overpayment.

### DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

The monthly income limit in an ongoing child care case is 200% of the federal poverty level. Child Care Policy Manual, §1.6.3. That amount for a four-person household was \$3,975 until February 1, 2015, when it increased to \$4,042. See DECE Operations Memo no. 15-05, dated February 21, 2014 and DECE/BELP Operations Memo no. 1508, dated March 3, 2015.

The Manual, at §1.6.6, tells agency workers to use prospective income, meaning that if a person earns a set dollar amount each week the worker should multiply weekly income by 4.3 to obtain monthly income.

The Manual, at §1.6.7, then goes on to provide that if regularly received income varies, an average should be used.

It is unclear if petitioner ever told her child care worker that her income fluctuated, but it also is unclear if a worker ever inquired about petitioner's income possibly fluctuating. Case notes do not mention fluctuating income; it appears that the worker initially used the employer verification form for the first few months of petitioner's job with [REDACTED] and then used the most recent pay stubs at the October review. See Agency Exhibit, pp. 18-21 for the case notes. It is clear that the worker erred when processing the employer verification form by failing to budget income from commissions, an item included on the form. While the initial error appears to be worker error, petitioner added to the error by not correcting the low income amount being budgeted by the agency. Petitioner had to know that she was making much more than \$2,800 per month.

Petitioner argued that when the overpayment was calculated the agency should have used average income because petitioner's income fluctuated. Had the agency done so, the overpayment would have been much higher. As noted, the worker who calculated the overpayment took each month's income and compared it to the income limit, concluding that petitioner was over the limit in four months (July and October, 2014, January and April, 2015). However, in two of the months, petitioner's actual income was substantially higher than the amounts the worker budgeted in the overpayment calculation. In August, 2014 and January, 2015, petitioner's gross income was over \$5,000. Because those were months with extra paychecks, the worker essentially excluded the "extra" pay check in determining the monthly income. Thus, in August, 2014, petitioner's actual income was \$5,108.30, but the worker budgeted only \$3,768.60 in the overpayment calculation. Similarly, in January, 2015, petitioner's actual income was \$5,722.93 but the worker budgeted \$4,129.04 in the overpayment calculation.

Had actual income been averaged over the eleven-month overpayment period, petitioner would have been overpaid all child care during the period. Average monthly income based on actual income received was \$4,105.58, which would have put petitioner over the income limit for the entire eleven-month period. Petitioner actually got a break by the worker calculating the overpayment based upon individual months' income rather than an average.

I will affirm the overpayment as calculated, and I will keep it as client error rather than agency error. The system does not have an option of attributing error to both the client and the agency. Although the initial error was made by an agency worker by failing to budget commission income, petitioner's failure to report that her actual income was much higher than the amount being budgeted was the primary reason for the overpayment. The source of the error is irrelevant in this case because it is calculated the same regardless of it being client error or agency error, but I find that client error was the more important reason for the overpayment.

### **CONCLUSIONS OF LAW**

The agency correctly determined a child care overpayment issued to petitioner resulting from petitioner's failure to report that her monthly income was substantially higher than the amount budgeted by the agency.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

## REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 25th day of September, 2015

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 25, 2015.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney Patricia Delessio